

**Response**

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Serial No.: 10/721,698

Confirmation No.: 6282

Filed: November 25, 2003

For: HEAT EXCHANGE APPARATUS, SYSTEM AND METHODS REGARDING SAME

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**Remarks**

The Office Action mailed 27 April 2005 has been received and reviewed. The pending claims are claims 1-9, 13-19, 28-32 and 36. Claims 10-12, 20-27, 33-35, and 37-39 have been withdrawn from consideration but are still pending in the present application, and as indicated by the Examiner, claims will be rejoined in the application as appropriate. Reconsideration and withdrawal of the rejections are respectfully requested in view of the remarks provided herein.

**The 35 U.S.C. §103 Rejection**

The Examiner rejected claims 1-4, 6-8, 13-15, and 17-18 under 35 U.S.C. §103(a) as being unpatentable over Bardenheier (U.S. Patent No. 4,782,888) and JP 2002-30717 (translation provided by Examiner). Further, claims 5, 16, 28-31 and 36 were rejected as being unpatentable over the same art, and further in view of FR 2381869 and Sherman (U.S. Patent 1,553,639). Yet further, claims 9, 19 and 32 were rejected as being unpatentable over the same art and further in view of Clancy (U.S. Patent 2,364,130), or JP 88730 (Fig. 3), or JP 9-229574 (Figs. 3-5).

Applicant respectfully traverses the Examiner's rejections and any allegations with respect to such references cited and applied to the present invention. However, to move this case to issuance, Applicant provides a "DECLARATION OF PRIOR INVENTION TO OVERCOME CITED PATENT UNDER 37 C.F.R. §1.131." The Declaration is attached hereto and evidences the conception of the present invention prior to the effective date of the JP 2002-30717 reference (i.e., the publication date of 31 January 2002) coupled with due diligence from prior to the effective reference date (i.e., the publication date of 31 January 2002) to the filing date (i.e., 27 November 2002) of the provisional application Serial No. 60/429,160 (e.g., constructive reduction to practice) to which the present application claims priority.

As such, the JP 2002-30717 reference is removed as a reference against the rejected claims. As all of the pending claims 1-9, 13-19, 28-32 and 36 have been rejected using the JP 2002-30717 reference, such claims are not obvious in view of the cited references. It is respectfully requested that the rejection be withdrawn.

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In view of the removal of the JP 2002-30717 reference, detailed comment on the remainder references is not provided. However, the citation of such numerous references to make obvious one or more claims of the present invention is clearly hindsight reconstruction of Applicant's invention.

**Summary**

It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for

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By

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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 27 day of Sept, 2005, at 9:30 A.M. (Central Time).

By: Sandy TruehartName: Sandy Truehart